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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,141	04/28/2007	Didier Lange	011348-0022-999	6570

20583 7590 08/28/2007  
JONES DAY  
222 EAST 41ST ST  
NEW YORK, NY 10017

EXAMINER
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LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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08/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/597,141

Applicant(s)

LANGE ET AL.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49 is/are allowed.
- 6) ☒ Claim(s) 25-27, 29, 30, 32, 33, 41-48 and 50 is/are rejected.
- 7) ☒ Claim(s) 28, 31, 34-36 and 38-40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received:

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/12/06 & 11/08/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. Applicant is reminded of the proper format for an abstract of the disclosure.

The abstract should be generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. describes," etc.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 25-26, 29-30, 32-33, 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Hu (5,967,688).

The Hu reference discloses a writing instrument comprising a body 4 provided with an ink reservoir; an inker element 24 mounted on the body; and a feeder device 2 comprising a duct (the bore of member 23) connecting the reservoir to the inker element 24 and opening out into the reservoir via an opening, the duct presenting an inside wall; and a valve 32 having a tab 322 received in the duct, the tab 322 being extended by a head (rear portion behind the portion 322), wherein the valve 32 is mounted to slide between a closed position in which the head 321 is pressed against a shoulder 313 bordering the opening so as to prevent ink from flowing, and an open position in which the head is located at least in part away from the shoulder 313 so as to enable ink to flow through the opening, wherein a gap 312 is formed between the tab 322 and the

inside wall of the duct, and wherein the tab 322 projects from the duct towards the inker element 24.

Regarding claim 26, the valve is made of a hydrophobic material.

Regarding claim 29, the feeder device 2 comprises a sleeve 23 in which the opening is formed, wherein the sleeve 23 is engaged on the nozzle 34 of the reservoir and has the valve member 32 mounted therein.

Regarding claims 30 and 50, the valve 32 is provided with through holes (formed between the ribs on the valve 32) provided on the head in the vicinity of the tab 322.

Regarding claim 32, the inker element 24 is continuously in contact with the tab 322.

Regarding claim 33, the inker element 24 is movable between a writing position in which it urges the valve 32 towards an open position to allow the ink to flow, and a rest position in which it allows the valve 32 to occupy a closed position.

4. Claims 25-26, 29, 32-33, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Giblin et al (4,723,860).

The Giblin et al reference discloses a writing instrument comprising a body 8 provided with an ink reservoir; an inker element 40 mounted on the body; and a feeder device 30 comprising a duct connecting the reservoir to the inker element 40 and opening out into the reservoir via an opening, the duct 18 presenting an inside wall; and a valve 14,50 having a tab 14 received in the duct, the tab 14 being extended by a head 50, wherein the valve 14,50 is mounted to slide between a closed position in which the head 50 is pressed against a shoulder bordering the opening 56 so as to prevent ink

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from flowing, and an open position in which the head 50 is located at least in part away from the shoulder so as to enable ink to flow through the opening, wherein a gap is formed between the tab 14 and the inside wall of the duct 18, and wherein the tab 14 projects from the duct towards the inker element 40.

Regarding claim 26, the valve is made of a hydrophobic material.

Regarding claim 29, the feeder device 30 comprises a sleeve 8 in which the opening is formed, wherein the sleeve 8 is engaged on the nozzle 6 of the reservoir 8 and has the valve member 14,50 mounted therein.

Regarding claims 32, the inker element 40 is continuously in contact with the tab 14.

Regarding claim 33, the inker element 40 is movable between a writing position in which it urges the valve 14,50 towards an open position to allow the ink to flow, and a rest position in which it allows the valve 14,50 to occupy a closed position.

Regarding claim 37, the body extends along a main axis, and the inker element 40 is a roller mounted to rotate about an axis that is perpendicular to the main axis.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 27 and 41-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu (5,967,688).

Although the Hu reference does not specifically show that the valve 32 is made of a material such as silicone, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select silicone for the valve 32 of Hu writing instrument, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding claims 41 and 45, the feeder device 2 comprises a sleeve 23 in which the opening is formed, wherein the sleeve 23 is engaged on a nozzle 34 of the reservoir and has the valve 32 mounted therein.

Regarding claims 42 and 46, the valve is provided with through holes provided in the head in the vicinity of the tab.

Regarding claims 43 and 47, the inker element 24 is continuously in contact with the tab 322.

Regarding claims 44 and 48, the inker element 24 is movable between a writing position in which it urges the valve 32 towards an open position to allow the ink to flow, and a rest position in which it allows the valve 32 to occupy a closed position.

7. Claims 27 and 41, 43-45, 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giblin et al (4,723,860).

Although the Giblin et al reference does not specifically show that the valve 14,50 is made of a material such as silicone, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select silicone for the valve 14,50 of Giblin et al writing instrument, since selecting a known material on the basis of its

suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding claim 41 and 45, the feeder device 30 comprises a sleeve 8 in which the opening is formed, wherein the sleeve 3 is engaged on a nozzle 7 of the reservoir 8 and has the valve 14,50 mounted therein.

Regarding claims 43 and 47, the ink element 40 is continuously in contact with the tab 14.

Regarding claims 44 and 48, the ink element 40 is movable between a writing position in which it urges the valve 14,50 towards an open position to allow the ink to flow, and a rest position in which it allows the valve 14,50 to occupy a closed position.

#### ***Allowable Subject Matter***

8. Claims 28, 31, 34-36, 38-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 49 is allowed.


#### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Huyen Le  
Primary Examiner  
Art Unit 3751

HL